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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,407	12/04/2004	Nimrod Gal-Oz	18481-005	4031
7590	07/11/2008		EXAMINER	
Sonia K. Guterman, Esq. Lawson & Weitzen, LLP Suite 345 88 Black Falcon Avenue Boston, MA 02210-2414			HICKS, CHARLES N	
			ART UNIT	PAPER NUMBER
			2623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/517,407	GAL-OZ, NIMROD	
	Examiner	Art Unit	
	CHARLES N. HICKS	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 April 2008.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 17-33 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 17-33 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 04 December 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/4/2004</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 7-13, filed 4/30/2008, with respect to the rejection(s) of claim(s) 17-33 under 35 USC 102 (e) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 USC 103 (a).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 17-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urdang (US 2007/0083902 A1), hereinafter referred to as Urdang, in view of Bornstein (US 2008/0008089 A1), hereinafter referred to as Borstein.

5. Regarding claim 17, Urdang discloses a method for selecting optimized transmission path in a television distribution network, the method comprising the steps of: receiving information relating to data to be transmitted to at least one set-top box, said information comprising metadata related to said data to be transmitted and an identification of said at least one set-top box (**fig. 1-4, pg. 5, paragraphs 46-48**); building a list of available transmission paths for the said set-top box (**fig. 1-4, pg. 5, paragraphs 47-48**); and transmitting the data to the set-top box using said selected transmission path (**fig. 1-4, pg. 5, paragraphs 47-48**).

However Urdang fails to disclose selecting an optimal transmission path based on said list and said metadata. Borstein discloses selecting an optimal transmission path based on said list and said metadata (**fig. 1, pg. 3, paragraphs 32-33**). Motivation to combine the references is due to the fact that both references deal with transmission of requested information via multiple transmission paths in a network. Therefore the invention would have been obvious to one of ordinary skill in the art at the time of the invention to ensure data is received timely.

6. Regarding claim 18, Borstein discloses the method wherein said metadata comprises information selected from a list consisting of: type of data to be transmitted, type of application that generated the data, type of application to receive the data, latency constraints of the data, or a combination thereof (**fig. 1, pg. 3, paragraph 32**).

7. Regarding claim 19, Urdang discloses the method wherein said step of building further comprises the step of retrieving information related to said set-top box from a database (**fig. 1, pg. 2, paragraphs 28-29**).

8. Regarding claim 20, Urdang discloses the method wherein the retrieved information comprises information on available transmission paths and capabilities of the set-top box (**fig. 1, pg. 2, paragraphs 28-29**).

9. Regarding claims 21-23, Urdang discloses the method further comprising the step of querying the set-top box to obtain data indicative of available transmission paths thereto (**fig. 1-4. pg. 4-5, paragraphs 44-46**).

10. Regarding claim 24, Borstein discloses the method further comprising the step of getting information relating to network load and creating said list in accordance with the obtained load information (**fig. 4-5, pg. 4, paragraph 37**).

11. Regarding claim 25, Borstein discloses the method wherein said step of selection is facilitated by a policy (**fig. 3-4, pg. 4, paragraph 36**).

12. Regarding claim 26, Borstein discloses the method wherein said policy is modifiable (**fig. 3-4, pg. 4, paragraph 36**).

13. Regarding claim 27, Borstein discloses a method wherein said step of building further comprises the step of retrieving information relating to load conditions in said distribution System, and wherein said list is constructed in accordance with said load conditions (**fig. 1, pg. 3, paragraph 33**).

14. Regarding claim 28, Urdang discloses an apparatus for selecting, optimized transmission in a television distribution network having a headend and a plurality of set-top boxes, the apparatus comprises: a list creator, adapted to create a list of available transmission paths from the headend to a specified set-top box, or a group of specified set-top boxes (**fig. 1-4, pg. 2-3, paragraphs 2—32**).

However Urdang fails to disclose a data route selector, adapted to automatically select the best applicable transmission path from said list for transmitting based on a policy applied to the combination of at least a data type to be transmitted and said list. Borstein discloses a data route selector, adapted to automatically select the best applicable transmission path from said list for transmitting based on a policy applied to the combination of at least a data type to be transmitted and said list (**fig. 1-2, pg. 3, paragraph 34**). Motivation to combine the references is due to the fact that both references deal with transmission of requested information via multiple transmission paths. Therefore the invention would have been obvious to one of ordinary skill in the art at the time of the invention.

15. Regarding claim 29, Urdang discloses an apparatus wherein said list creator further comprises an information retriever module adapted for querying a data base for information regarding said set-top box capabilities and transmission paths available thereto (**fig. 1, pg. 2, paragraphs 29-30**).

16. Regarding claim 30, Urdang discloses an apparatus wherein said information retriever module is further adapted to query said set-top box for information on available transmission paths available thereto, or the its capabilities, or a combination thereof (**fig. 1, pg. 2, paragraphs 29-30**).

17. Regarding claim 31, Urdang discloses an apparatus wherein said list creator further comprises an information retriever module adapted to query said set-top box for information on available transmission paths and capabilities of said set-top box (**fig. 1, pg. 2, paragraphs 28-30**).

18. Regarding claim 32, Borstein discloses an apparatus wherein said list creator is further adapted for retrieving information relating to network load and creating said list in accordance with the load information (**fig. 1-2, pg. 3, paragraphs 33-34**).

19. Regarding claim 33, Borstein discloses an apparatus wherein said list creator is further adapted to retrieve information relating to load conditions of said distribution

network, and utilize said information in creating said list (**fig. 1-2, pg. 3, paragraphs 33-34**).

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dillon (US Patent No. 5,852,721) discloses a method and apparatus for selectively retrieving information from a terrestrial or satellite interface. Penk (US 2003/0074670 A1) discloses propagation of dynamic network information. Swart (US 2003/0028884 A1) discloses video and digital multimedia aggregator content availability notification system and method.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHARLES N. HICKS whose telephone number is (571)270-3010. The examiner can normally be reached on M-F 7:30AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art
Unit 2623

CNH